Case: Stephen Jeffrey

128 France Road

For:

Appeal of Administrative Decision

DTC Lawyers
Dedicated to Clients

MICHAEL J. DONAHUE
CHARLES F. TUCKER
ROBERT D. CIANDELLA
LIZABETH M. MACDONALD
JOHN J. RATIGAN
DENISE A. POULOS
ROBERT M. DEROSIER
CHRISTOPHER L. BOLDT
SHARON CUDDY SOMERS
DOUGLAS M. MANSFIELD
KATHERINE B. MILLER
CHRISTOPHER T. HILSON
JUSTIN L. PASAY
ERIC A. MAHER
PATRICK O. COLLINS

OF COUNSEL
NICHOLAS R. AESCHLIMAN

RETIRED
ROBERT B. DONOVAN

ROBERT A. BATTLES
(1951-2010)

PLEASE RESPOND TO THE PORTSMOUTH OFFICE

October 28, 2014

HAND DELIVERED

John Huckins
Building Inspector/Code Enforcement Officer
P.O. Box 660
333 Calef Highway
Barrington, NH 03825

Town of Barrington
Zoning Board of Adjustment
P.O. Box 660
333 Calef Highway
Barrington, NH 03825

Re: **RSA 676:5, (I) Appeal of Administrative Decision**

Dear Members:

This letter, the attached application, and the corresponding exhibits constitute an Appeal of Administrative Decision pursuant to RSA 676:5. The decision appealed is that of the Code Enforcement Officer John Huckins' Notice of Violation, dated 29 September 2014[1], related to alleged activity on property owned by Stephen Jeffery at 128 France Road in Barrington, identified as Town Tax Map 256 Lot 43, within the Town's GR district ("the Property"). This firm represents the interests of Mr. Jeffery in this matter.

The Notice of Violation alleges a violation of Article 3.1.6 of the Town's Zoning Ordinance, which requires all multifamily dwelling units and non-residential development to comply with the Town's site plan review regulations. The Notice of Violation ordered Mr. Jeffery to cease the operation of his business until he 1) receives site review or 2) can provide evidence that he complies with the Town's regulations.

[1] *See* Exhibit A.

DONAHUE, TUCKER & CIANDELLA, PLLC
Exeter Office: 225 Water Street, P.O. Box 630, Exeter, NH 03833, 603-778-0686
Portsmouth Office: 111 Maplewood Avenue, Suite D, Portsmouth, NH 03801, 603-766-1686
Meredith Office: 56 NH Route 25, P.O. Box 214, Meredith, NH 03253, 603-279-4158
www.dtclawyers.com

LAND USE OFFICE
OCT 29 2014
RECEIVED

The specific grounds for Mr. Jeffery's appeal are articulated in detail in Exhibit B, a letter (with corresponding exhibits) sent to Mr. Huckins on 20 October in response to the issuance of the Notice of Violation, and Exhibit C, an affidavit from Mr. Jeffery which supplemented said letter. At the time of the submission of this appeal, Mr. Jeffery has received no response from Mr. Huckins.

In summary, and as articulated in far greater detail in Exhibits B and C, Mr. Jeffery's business, *de minimis* portable sawmill use, and receipt of logs from off-site are permitted agricultural uses within the GR district and are all incidental to the decades-long operation of his certified tree farm. Accordingly, Mr. Jeffery's appeal should be granted so that he may immediately resume the operation of his tree farm.

In the alternative, the uses at issue are legal nonconforming uses at the Property because they were expressly permitted in 1983 when they began, and did not require site review. The uses have been constant and consistent and comply with Article 5.3 of the Town's Zoning Ordinance. On these alterative grounds, Mr. Jeffery's appeal should be granted so that he may immediately resume the operation of his tree farm.

In addition to the argument and materials provided to Mr. Huckins in Exhibits B and C, please also find enclosed a copy of the applicable zoning ordinance in 1983, Exhibit D, and a copy of the applicable site plan regulations in 1983, Exhibit E.

Please do not hesitate to contact me at (603) 766-1686 with any comments or concerns.

Very truly yours,

DONAHUE, TUCKER & CIANDELLA, PLLC

Justin L. Pasay, Esq.
jpasay@dtclawyers.com

cc:
Client
John J. Ratigan, Esq. (email only)

LAND USE OFFICE
OCT 29 2014
RECEIVED

Zoning Board Of Adjustment Application

Barrington Zoning Board of Adjustment

Zoning Ordinance Variance and Special Exemption

Application Checklist

Please schedule a meeting with staff before submitting your application.

This checklist has been prepared to assist you in submitting a complete application to the Town of Barrington. At the Pre-Application meeting, staff will check off the items on this list that are required with your submission.

This document constitutes a public disclosure under RSA Chapter 91 – A, Access to Governmental Records and Meetings.

Date 10/29/2014 Case No. 256-43-6R-14-ZBA Appeal

PART I – GENERAL REQUIREMENTS

All Graphics shall be to Scale and Dimensioned

Description of Documents Required for Complete Application. No application shall be accepted without all items marked below.

Req'd	Rec'd	
☐	☐	✓ 1. Zoning Board of Adjustment Application Checklist *(this form)*
☐	☐	✓ 2. ZBA General Information (Article(s) and Section(s) of Ordinance)
☐	☐	✓ 3. Appeal and Decision
☐	☐	4. Fees - $150.00 Application ☑ ✓ $ 75.00 Legal Notice ☑ ✓ $ 7.00 per US Post Office Certified Letter ☑ ✓
☐	☐	5. Completed Project Application Form ☐ Variance ☐ Special Exception ☒ Appeal
☐	☐	6. Notarized Letter of Authorization (from property owner(s) if property owner did not sign the application form)
☐	☐ N/A	7. Project Narrative
☐	☐ N/A	8. HOA Approval *(if applicable)*

LAND USE OFFICE
OCT 29 2014
RECEIVED

☐ ☐ N/A 9. Context or Locus Map (Show Surrounding Zoning Districts)

☐ ☐ N/A 10. Existing Conditions Site Plan or Recorded Subdivision Plan to include well and septic location (may be found at Strafford County Registry of Deeds).

☐ ☐ N/A 11. Existing Conditions Photo Exhibit *(See instruction page for submitting photos)* Up to four photos may be shown per 8 ½" X 11" page size
   a. Show all existing structures on site

☐ ☐ ✓ 12. List of Certified Abutters (Include Applicant and all licensed professionals, i.e., engineer, architect, land surveyor, or soil scientist, whose seals are affixed to the plan, as well as any holder of a conservation or agricultural easement)

☐ ☐ ✓ 13. Mailing Labels (4 sets)

PART II – REQUIRED PLANS AND RELATED DATA
All Graphics and Plans Shall be to Scale and Dimensioned

☐ ☐ 1. Site Plan - ***Drawn and Stamped by Registered Land Surveyor***
   a. 24" X 36" – 2 Copies
   b. 11' X 17" – 6 Copy
   c. 8 1/2 " X 11" – 1 Copy

☐ ☐ 2. Elevations: Show all sides of building and indicate building heights
   a. 24" X 36" – 2 Copies
   b. 11' X 17" – 6 Copy
   c. 8 1/2 " X 11" – 1 Copy

☐ ☐ 3. Floor Plans
   a. 24" X 36" – 2 Copies
   b. 11' X 17" – 6 Copy
   c. 8 1/2 " X 11" – 1 Copy

☐ ☐ 4. All drawings and any revised drawings must be submitted in PDF format

☐ ☐ 5. OTHER: _____

☐ ☐ 6. Your Appointment Date and Time for Submitting the Complete Application is:

_____

Barbara Irwine 10/29/2014
Staff Signature Date

Land Use Department
Town of Barrington; 137 Ramsdell Lane; Barrington, NH 03825
planner.cbrawders@barrington.nh.gov **Phone: 603.664.5798**

LAND USE OFFICE
OCT 29 2014
RECEIVED

PART III – PROJECT DESCRIPTION/VARIANCE DETAILS

Case No. 256-43-GR14-ZBA Appeal

Project Name N/A

Location Address 128 France Road

Map and Lot 256/43

Zoning District (Include Overlay District if Applicable) Rural

Property Details:

☒ Single Family Residential ☐ Multifamily Residential ☐ Manufactured Housing
☐ Commercial ☐ Mixed Use ☒ Agricultural ☐ Other

Use: Residential with Tree Farm

Number of Buildings: 4 Height: 1 1/2 stories

Setbacks: Front n/a Back n/a Side n/a Side n/a

Description of Request

Cite the Section of the Zoning Ordinance you are requesting a Variance or Special Exemption for. If this is an Appeal from an Administrative Enforcement Order, Planning Board Decision, or Zoning Board of Adjustment Decision, please attach pertinent documentation:

See attached letter

Project Narrative: *(Please type and attach a separate sheet of paper)*

See attached letter

Barrington Zoning Ordinance Requirements:

See attached letter

Request: *(You may type and attach a separate sheet of paper)*

See attached letter

LAND USE OFFICE
OCT 29 2014
RECEIVED

PART IV – If this is a JUSTIFICATION FOR VARIANCE

The Zoning Board of Adjustment may not authorize a zoning ordinance variation unless ALL of the following criteria are met. Please provide evidence that the requested Variance complies by addressing the issues below.

☐ 1. Special conditions exist such that literal enforcement of the Ordinance will result in unnecessary hardship to the applicant as defined under applicable law.

_____

_____

☐ 2. Granting the variance would be consistent with the spirit of the Ordinance.

_____

_____

☐ 3. Granting the variance will not result in diminution of surrounding property values.

_____

_____

☐ 4. Granting of the variance would do substantial justice.

_____

_____

☐ 5. Granting of the variance would not be contrary to the public interest.

_____

_____

PART V – If this is a JUSTIFICATION FOR SPECIAL EXCEPTION

Please provide evidence that the requested Special Exemption complies by addressing the issues below.

☐ 1. No detriment to property values in the vicinity of the proposed development will result on account of: the location or scale of buildings, structures, parking areas, or other access ways; the emission of odors, smoke, gas, dust, noise, glare, heat, vibration, or other pollutants; or unsightly outdoor storage of equipment, vehicles, or other materials.

_____

_____

☐ 2. No hazard will be caused to the public or adjacent property on account of potential fire, explosion, or release of toxic materials.

_____

_____

☐ 3. No creation of a traffic safety hazard or substantial traffic congestion will result in the vicinity of the proposed development.

LAND USE OFFICE
OCT 29 2014
RECEIVED

☐ 4. No excessive demand on municipal services and facilities, including, but not limited to waste disposal, police and fire protection, and schools.

☐ 5. The proposed use will not result in the degradation of existing surface and groundwater quality standards, nor will it have adverse effects on the natural functions of wetlands on the site that would result in the loss of significant habitat or flood control protection.

In addition to the guiding principles specified above, the ZBA may condition the granting of a special exception upon more stringent standards if the Board determines that such conditions are necessary to protect the health and welfare of the town and its residents. Such conditions may include the following and should be addressed in the Narrative:

☐ 1. Front, side, or rear yards in excess of the minimum requirements of this Ordinance.

☐ 2. Screening of the premises from the street or adjacent property by walls, fences, or other devices.

☐ 3. Limitations on the size of buildings and other structures more stringent than minimum or maximum requirements of this Ordinance.

☐ 4. Limitations on the number of occupants and methods and times of operation.

☐ 5. Regulation of the design and location of access drives, sidewalks, and other traffic features.

☐ 6. Location and amount of parking and loading spaces in excess of existing standards.

☐ 7. Regulation of the number, size, and lighting of signs in excess of existing standards.

STEPHEN JEFFERY
BY HIS ATTORNEYS, DONAHUE, TUCKER & CIANDELLA, PLLC

Signature of Applicant Justin L. Pasay, Esq. 28 Oct 2014 Date

Signature of Owner Date

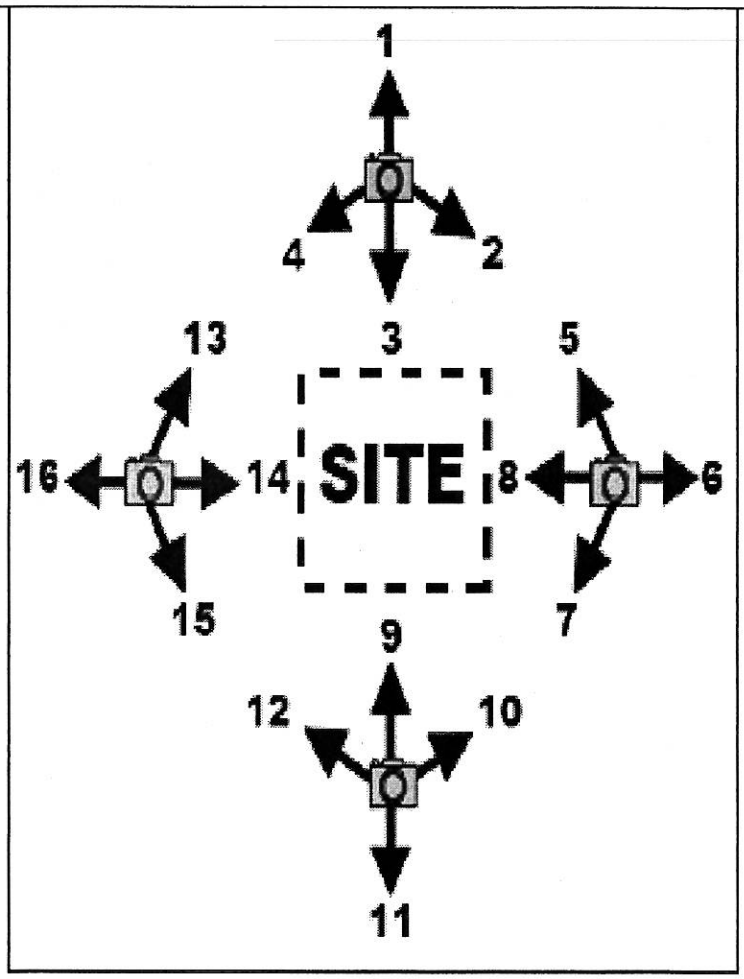
LAND USE OFFICE
OCT 29 2014
RECEIVED

SITE / CONTEXT PHOTOS

Using Guidelines Below

Provide color photographs showing the site and surrounding buildings/properties in order to provide staff, boards and commissions with a visual impression of the current site conditions.

1. Photos are to be taken looking toward the site and adjacent to the site.
2. Photos should show adjacent improvements and existing on-site conditions.
3. Number the photographs according to view.



LAND USE OFFICE
OCT 29 2014
RECEIVED

SECURITY WARNING: THE FACE OF THIS DOCUMENT FEATURES A COLORED BACKGROUND AND MICROPRINT BORDERS - THE REVERSE SIDE FEATURES WATERMARKS

DONAHUE, TUCKER & CIANDELLA, PLLC
ATTORNEYS AT LAW
225 WATER STREET - P.O. BOX 630
EXETER, NEW HAMPSHIRE 03833

PEOPLE'S UNITED BANK
EXETER, NH 03801
51-7218/2211

051271

10/28/2014

PAY TO THE ORDER OF TOWN OF BARRINGTON $323.00

Three hundred twenty-three and NO/100 Dollars DOLLARS

TOWN OF BARRINGTON

MP
AUTHORIZED SIGNATURE

⑈051271⑈ ⑆221172186⑆ 6500274063⑈

DONAHUE, TUCKER & CIANDELLA, PLLC

051271

TOWN OF BARRINGTON

Check Date	Amount Paid
10/28/2014	$323.00

Invoice #	Invoice Date	Invoice Amount	Disc. Taken
8556-0001	10/28/2014	$323.00	$0.00

LAND USE OFFICE
OCT 29 2014
RECEIVED

LETTER OF AUTHORIZATION

I, Stephen Jeffery, as owner of property depicted on Tax Map 256, Lot 43, do hereby authorize, Donahue, Tucker and Ciandella, as my attorneys, to execute all land use applications to the Barrington Zoning Board of Adjustment and to take any action necessary for the application, including but not limited to, attendance and presentation at public hearings, of the said property.

Dated:_____

_____
Stephen Jeffery

State of New Hampshire
County of Strafford

The foregoing instrument was acknowledged before me this 29th day of Oct, 2014, by Stephen Jeffery.

_____
Notary Public
My Commission Expires:
Seal or Stamp:

S:\JA-JL\JEFFERY STEPHEN\ADMIN APPEAL\2014 10 28 LETTER OF AUTHORIZATION.DOCX

LAND USE OFFICE
OCT 29 2014
RECEIVED

EXHIBIT
A

Town of Barrington

Code Enforcement/Building Department
P.O. Box 660
Barrington, NH 03825
603-664-5183

September 29, 2014

Stephen P Jeffery
128 France Rd.
Barrington, NH 03825

Notice of Violation

Re: Complaint Address, Barrington, New Hampshire
Parcel I.D. Number: 256-0043

Dear Mr. Jeffery:

An inspection/view of your property located at 128 France Rd., Barrington, New Hampshire, on September 29, 2014 shows the following violation(s) of the Town of Barrington Zoning Ordinance:

3.1.6

Having the above outlined and referenced violation(s) in mind, it is the purpose of this letter to inform you that you are hereby ordered to **CEASE THE OPERATION OF YOUR BUSINESS UNTIL YOU RECEIVE SITE REVIEW. OR CAN PROVIDE EVIDENCE THAT YOU COMPLY WITH THE TOWN OF BARRINGTONS REGULATIONS.** By no later than the close of business on October 29, 2014. Your failure to take action upon receipt of this notice will leave the town no alternative other than to take enforcement action against you.

Pursuant to RSA 676:17, any person who violates any of the provisions of this title, or any local ordinance, code or regulation adopted under this title, or any provision or specification of any application, plat, or plan approved by, or any requirement or condition of a permit or decision issued by, any local administrator or land use board acting under the authority of this title shall be guilty of a misdemeanor if a natural person, or guilty of a felony if any other person; and shall be subject to a civil penalty of $275.00 for the first offense, and $550.00 for subsequent offenses, for each day that such violation is found to continue after the conviction date or after the date on which the violator receives written notice from the municipality that the violator is in violation, whichever is earlier. Each day a violation continues shall be a separate offense.

PLEASE CONSIDER THIS LETTER AS WRITTEN NOTIFICATION OF THE AFOREMENTIONED VIOLATION(S) OF THE ABOVE REFERENCED PROVISIONS OF THE TOWN OF BARRINGTON ZONING ORDINANCE.

LAND USE OFFICE
OCT 29 2014
RECEIVED

Please be advised that should it be necessary for the town to take enforcement action against you, the town shall seek to impose fines and civil penalties upon you for such violations. Such fines and penalties will include the recovery of attorney's fees and costs incurred by the town in connection with any enforcement proceeding as authorized by the provisions of R.S.A. 676:17 as well any other applicable law.

You may exercise your right to appeal this decision by filing a written application with the Town of Barrington Board of Adjustment pursuant to the provisions of NH RSA 676:5.

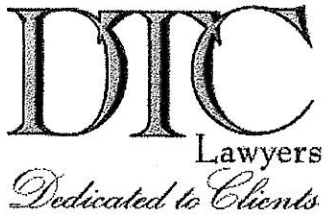
Should you have any questions regarding this matter, please feel free to contact me at (603) 664-5183 during regular business hours.

Sincerely,

John D. Huckins
Code Enforcement Officer

LAND USE OFFICE
OCT 29 2014
RECEIVED

EXHIBIT
B



MICHAE
CHARLES P. TUCKER
ROBERT D. CIANDELLA
LIZABETH M. MACDONALD
JOHN J. RATIGAN
DENISE A. POULOS
ROBERT M. DEROSIER
CHRISTOPHER L. BOLDT
SHARON CUDDY SOMERS
DOUGLAS M. MANSFIELD
KATHERINE B. MILLER
CHRISTOPHER T. HILSON
JUSTIN L. PASAY
ERIC A. MAHER
PATRICK O. COLLINS

OF COUNSEL
NICHOLAS R. AESCHLIMAN

RETIRED
ROBERT B. DONOVAN

ROBERT A. BATTLES
(1951-2010)

PLEASE RESPOND TO THE PORTSMOUTH OFFICE

October 20, 2014

SENT VIA US MAIL AND E-MAIL AS NOTED

John D. Huckins
Code Enforcement/Building Department
P.O. Box 660
Barrington, NH 03825

Re: **Notice of Violation: 128 France Road**

Dear Mr. Huckins:

This firm represents the interests of Stephen Jeffery of 128 France Road which is identified as Town Tax Map 256 Lot 43 and is located in the Town's General Residential ("GR") district (the "Property" or the "Tree Farm"). This letter responds to your Notice of Violation dated 29 September 2014 in which you advise Mr. Jeffery that he is in violation Article 3.1.6 of the Town of Barrington's (the "Town") Zoning Ordinance and order him to cease the operation of his business at the Property until he receives site review or can otherwise provide evidence that the Property is in compliance with the Town's regulations. Upon seeking clarification of the business referenced in your Notice of Violation, you advised Mr. Jeffery that "the business that is referenced in my letter has to do with the operation of a sawmill."

Executive Summary

Mr. Jeffery's business and *de minimis* portable sawmill use are permitted agricultural uses within the GR district and are incidental to the decades-long operation of his Tree Farm. Accordingly, and in conjunction with the terms of the underlying conservation easement, site plan review is not required and Mr. Jeffery's business should be authorized to immediately resume operations.

In the alternative, these uses are legal nonconforming uses at the Property because they were expressly permitted in 1983 when they began and did not require site review. The uses have been constant and consistent and comply with Article 5.3 of the Town's Zoning Ordinance.

LAND USE OFFICE
OCT 29 2014
RECEIVED

As such, Mr. Jeffery's business and the Tree Farm do not require site review or a conditional use permit to continue.

We request 1) written acknowledgment that Mr. Jeffery's business, Tree Farm, and incidental sawmill use, as detailed below and in the enclosed affidavit, are permitted uses at the Property and 2) a written withdrawal of the aforementioned Notice of Violation which has served until now, to inflict unnecessary financial damage on Mr. Jeffery by shutting his business down.

Factual Background

As articulated in the enclosed affidavit, Mr. Jeffery acquired the Property in 1980. The Property is comprised of approximately 75 acres and contains a residence, a barn, and a conservation easement which Mr. Jeffery conveyed to the Society for the Protection of New Hampshire Forests in 1984.[1] The land comprised by the conservation easement constitutes Mr. Jeffery's Tree Farm and is simultaneously used, at Mr. Jeffery's discretion, by the general public for its trails, hiking and water access to Mendums Pond.[2]

Pursuant to the terms of the conservation easement, the Property is preserved as open space and industrial or commercial activities are prohibited with the exception of agriculture and forestry.[3] The terms "agriculture" and "forestry" specifically include "all agriculture, animal husbandry, floriculture, and horticulture activities; the production of any and all plant and animal products for commercial purposes, including without limitation the growing and stocking of Christmas trees or forest trees of any size capable of producing timber and other wood products or the cutting and sale of timber and other wood products."[4] Further, the conservation easement prohibits development in the form of construction, placement or introduction of structures or improvements on the Property as well as changes in topography, surface or sub-surface water systems, wetlands, or wildlife habitats and the display of signs, billboards, or outdoor advertising structures except as is necessary to accomplish the above agricultural, forestry, conservation, or recreational uses of the Property.[5]

For over 30 years Mr. Jeffery has operated the Tree Farm consistent with the aforementioned provisions of the conservation easement. Mr. Jeffery's business involves the

---

[1] Strafford County Registry of Deeds, Book 1153, Page 0025. *See also* Exhibit 1, a copy of the Conservation Easement.

[2] The general public utilizes the open space of the tree farm to hike, run, bicycle, ski and snowshoe. The Property contains beaches along Mendums pond which represent great places for children and families to relax. Mr. Jeffery maintains a raft on the pond he keeps tubes at the beaches all summer which are available for use by anyone. Mr. Jeffery also keeps several canoes with life jackets which he makes available upon request.

[3] Conservation Easement, ¶ 1(A).

[4] *Id.* at ¶ 1(A)(i)

[5] *Id.* at ¶ 1(ii)(C) – (E).

LAND USE OFFICE
OCT 29 2014
RECEIVED

production of boards, beams, and clapboards for commercial sale, operations expressly authorized under the conservation easement. The business is incidental to Mr. Jeffery's operation of the Tree Farm and it relies, in small part, on the *de minimis* use of portable sawmills which began on or before 1983. The vast majority of his business involves the production of clapboards, used primarily as siding in historic restorations. Mr. Jeffery utilizes two outdoor portable sawmills in furtherance of his business operation: 1) a sawmill for the production of boards and beams ("board and beam sawmill") and 2) a sawmill for the production of clapboards ("clapboard sawmill").[6]

Mr. Jeffery also owns the abutting parcel to the Property which is identified as Town Tax Map 256 Lot 42 and is approximately 2.64 acres in size. The abutting property contains a gambrel style workshop which Mr. Jeffery built in 1979. Since 1979, Mr. Jeffery has used the workshop on the abutting property for his personal use and to support the Tree Farm and his business.

For many years, Mr. Jeffery used a portable board and beam sawmill brought to the Property from off-site. He now uses a 20 horse power Brand X sawmill for the production of boards and beams which he purchased as an alternative to bringing a sawmill to the Property. This sawmill has logged 489 hours of use since it was purchased in January of 2006 which equates to an average of 4.6 hours per month. On average, the board and beam sawmill is used at the Property less than 30 days per year. As indicated above, Mr. Jeffery's business also relies on a clapboard sawmill which he designed and built. Like the board and beam sawmill, the clapboard sawmill is portable in nature and is used outdoors.

Since the beginning of the Tree Farm and Mr. Jeffery's business, he has used logs from the tree farm and logs brought to the Property from off-site to generate his products. In general, Mr. Jeffery endeavors to have logs processed through the sawmill before the spring (and insects) arrives. When he does operate a sawmill, it is between the hours of 9 a.m. and 5:00 p.m. Rarely does he operate a sawmill on the weekend. During the spring and summer months, Mr. Jeffery spends the majority of his time inside his workshop where he prepares the clapboards, boards and beams for sale.[7]

Historically, Mr. Jeffery averages less than 12 customers per year. Since the beginning of 2014, Mr. Jeffery has had six customers, half of which were the end-users of the product. Of those six, half came to the abutting property to pick the product up. Mr. Jeffery delivered product to the remaining customers. This is consistent with his practice over the last 30 years.

---

[6] *See* Exhibit 2, which contains several photographs of the clapboard sawmill in question.
[7] *See* Exhibit 3 which includes photographs of the Property, taken years apart, which depict the small scale of Mr. Jeffery's business operation and its consistent footprint on the Property.

LAND USE OFFICE
OCT 29 2014
RECEIVED

The scope and scale of Mr. Jeffery's Tree Farm operation and business have remained constant and consistent since 1983.

Applicable Law

Agricultural uses are permitted within the GR district under the current Zoning Ordinance ("Current Zoning Ordinance").[8] "Agricultural use" is defined within the Current Zoning Ordinance as "[a] parcel that is used for the production and storage of farm crops such as vegetables, fruit trees, grain, as well as open air farmers markets, and which applies best management practices to said activities. It shall also include animal and poultry husbandry but not the slaughtering or processing of animals or animal byproducts." Neither "farm," "farm crops" nor "forestry" are defined by the Current Zoning Ordinance. Article 1.6(2) states that words or phrases not specifically defined in the Zoning Ordinance "are to be given their common and generally accepted meaning."

RSA 21:34-a, I defines "farm" as "any land, buildings, or structures on or in which agriculture and farming activities are carried out . . ." The words "agriculture" and "farming" as defined by RSA 21:34-a, II(a)(11) and RSA 21:34-a, II(b)(4) include "the production, cultivation, growing, harvesting, and sale of any agricultural . . . or . . . forestry . . . crops including . . . trees and tree products" and "forestry or lumbering operations." Further, any agricultural use "may without restriction be expanded" and "altered to meet changing technology or markets."[9]

The Current Zoning Ordinance lists "sawmills" under the Industrial Use portion of Article 19, Table 1, alongside "contractor's storage & equipment yards," "excavation operations," "light manufacturing facilities," "machine shops," "research & development facilities," "truck terminals," "wholesale uses," and "warehouse operations." A sawmill use is permitted in the GR district with a conditional use permit from the Planning Board. "Sawmill" is not defined by the Current Zoning Ordinance. Webster's New World Dictionary, Second Edition, defines "sawmill" as "a factory where logs are sawed into boards."

The current Site Plan Review Regulations for Nonresidential Uses and Multi-Family Dwelling Units governs "the development or change or expansion of use of tracts for nonresidential uses or for multi-family dwelling units, which are defined as any structures containing more than 2 dwelling units, whether or not such development includes a subdivision or re-subdivision of the site."[10] The term "development" is defined by the Current Zoning Ordinance as "[a]ny man-made change to improved or unimproved real estate, including, but not

[8] Article 19, Table 1.
[9] RSA 674:32-b.
[10] Site Plan Review Regulations, Article 1.1.

LAND USE OFFICE
OCT 29 2014
RECEIVED

limited to, buildings or other structures, mining, dredging, filling, grading, paving, excavation, or drilling operations" and includes "the carrying out of any building activity" and the "making of any material change in the use or appearance of any structure or land."[11]

In 1983, when Mr. Jeffery first began using portable sawmills at the Property, the Town of Barrington Zoning Ordinance of 1972, as amended 8 March 1977 and 11 March 1980 ("1983 Zoning Ordinance") was in effect. At the time, the Property's zoning district was "Agricultural-Residential District (Zone A)." Among the permitted uses in Zone A was the "buying, selling and exposing for sale of home produce and product" and "farming, including . . . forestry, and other related agricultural enterprises, and the sale of products realized from farming . . ."[12] The Zoning Ordinance defined "home produce and products" as including "everything of an agricultural nature, grown, produced, conditioned or otherwise carried on the property of the resident, and such articles as are manufactured or altered by members of the household and their employees."[13] The applicable Site Plan Review Regulations, those adopted 8 May 1980 ("1983 Site Review Regulations"), applied exclusively to "the review of nonresidential and multi-family dwelling units site plans. . ."[14]

Under the Current Zoning Ordinance, a nonconforming use is defined as follows:

> The use of property for a purpose or in a manner made unlawful by the use regulations applicable to the district in which the property is located. (For example, a commercial office building in a residential district may be a nonconforming use.) The term also refers to the activity that constitutes the use made of the property (For example, all the activity associated with running a bakery in a residentially zoned area is a nonconforming use.)[15]

Further, "[w]here on the effective date of adoption of [the Current Zoning Ordinance] or applicable amendment, a lawful use of land exits which would not be permitted by the regulations imposed by [the Current Zoning Ordinance], the use may be continued so long as it remains otherwise lawful" and complies with the four criteria outlined in Article 5.3(1)-(4).[16]

---

[11] Current Zoning Ordinance, Article 18.
[12] 1983 Zoning Ordinance, Article Six, Allowed Uses (a) and (g).
[13] *Id*, at Definitions (A).
[14] 1983 Site Review Regulations, Section 1.
[15] Current Zoning Ordinance, Article 18.
[16] Current Zoning Ordinance, Article 5.3(1) – (4) states that nonconforming uses may not be changed to other nonconforming uses, extended or enlarged to occupy a greater area of land than was occupied at the effective date or amendment of the Current Zoning Ordinance; cannot be moved, in whole or in part, to any portion of the lot other than that occupied by such use at the effective date or amendment of the Current Zoning Ordinance; cannot be changed to a conforming use and reverted back to a nonconforming use; and cannot be discontinued for a period of (1) year and thereafter be resumed.

LAND USE OFFICE
OCT 29 2014
RECEIVED

Analysis

1) **Mr. Jeffery's Tree Farm, business, and sawmill uses are permitted uses under the Current Zoning Ordinance.**

New Hampshire has codified the beneficial nature of agricultural and forestry uses in this state and has declared that the same shall not be unreasonably limited by municipalities.[17] Moreover, no agricultural operation can be found to be a public or private nuisance as a result of changed conditions in or around agricultural operation, "if such agricultural operation has been in operation for one year or more and if it was not a nuisance at the time it began operation."[18]

Mr. Jeffery's business and tree farm are clearly agricultural uses under the Current Zoning Ordinance and are therefore permissible. As explained above, pursuant to state law, the terms "farm" and "agriculture" include by definition, the production, cultivation, growing, harvesting, and sale of any forestry and tree products and lumbering operations. Accordingly, Mr. Jeffery's business, which includes the production, cultivation, growing, harvesting, and sale of products produced from trees, constitutes the "production and storage of farm crops" under Article 18 of the Current Zoning Ordinance. Moreover, Mr. Jeffery's *de minimis* use of portable sawmills, constituting the best technology available for the limited purposes for which they are used, and in existent since at least 1983, is necessary and incidental to the operation of the Tree Farm.

Importantly, the sawmills in question, the usage of which is explained above and in the attached affidavit, are clearly not consistent with the industrial nature of the sawmill use listed in the Current Zoning Ordinance, which lists as comparable industrial uses, truck terminals and machine shops. Similarly, the sawmills in question do not comport with the common and ordinary definition of "sawmills" as articulated in Websters New World Dictionary which clearly contemplates a large scale factory-like operation.

Finally, no development has occurred, nor could it occur, that would trigger site review requirements.[19] There have been no changes or improvements to the underlying real estate, no

---

[17] *See*, RSA 672:1, III-b which states that "Agricultural activities are a beneficial and worthwhile feature of the New Hampshire landscape and shall not be unreasonably limited by use of municipal planning and zoning powers or by the unreasonable interpretation of such powers." *See also* RSA 672:1, III-c which states that "forestry activities, including the harvest and transport of forest products, shall not be unreasonably limited by use of municipal planning and zoning powers or by the unreasonable interpretation of such powers."

[18] RSA 432:33.

[19] The Property's underlying conservation easement specifically prohibits any development of any kind. Accordingly, no site plan could be approved for the Property.

LAND USE OFFICE
OCT 29 2014
RECEIVED

expansion of non-residential uses, no construction of buildings and no other material changes in the use or appearance of the land.

In summary, Mr. Jeffery's Tree Farm, business, and incidental sawmill uses are permitted uses within the GR district.

2) **In the alternative, the respective uses are legal nonconforming uses.**

In the alternative, and if the Town determines that the uses in question are not permissible, Mr. Jeffery's Tree Farm, business and sawmill uses are undeniably legal nonconforming uses which were clearly permitted in 1983 when they began. The boards, beams, and clapboards he produces are squarely "home products" that were conditioned, manufactured and altered on the Property by Mr. Jeffery, the Property's owner. Further, Mr. Jeffery's operation has remained constant and unchanged since 1983 when it began. It has not been changed to another nonconforming use, extended or enlarged; has not been moved to any other portion of the lot; was not changed to a conforming use and reverted back; and was never discontinued.[20] [21]

Mr. Jeffery's business and sawmill use did not require site review under the 1983 Site Review Regulations because those regulations applied exclusively to the review of non-residential and multi-family dwelling unit site plans.[22] Mr. Jeffery's business has never required the construction of any non-residential or multi-family dwelling units.

Because Mr. Jeffery's business and sawmill use were permitted uses in the zoning district at the time that they began and did not require site review, and because the uses satisfy all components of Article 5.3(1) – (4) of the Current Zoning Ordinance, they are valid and legal nonconforming uses. Accordingly, Mr. Jeffery's business does not require site review or a conditional use permit and must immediately be authorized to continue.

Conclusion

At your earliest convenience, please acknowledge in writing that Mr. Jeffery's Tree Farm, business and sawmill uses are valid agricultural uses in the GR district. In the alternative, please acknowledge in writing that Mr. Jeffery's Tree Farm, business and sawmill uses are legal

---

[20] *See* Exhibit 3. *See also* Current Zoning Ordinance, Article 5.3.
[21] *See* RSA 674:19 which states that "[a] zoning ordinance adopted under RSA 674:16 shall not apply to existing structures or to the existing use of any building. It shall apply to any alteration of a building for use for a purpose or in a manner which is substantially different from the use to which it was put before alteration."
[22] *See* 1983 Site Review Regulations, Section 1.

LAND USE OFFICE
OCT 2 9 2014
RECEIVED

nonconforming uses. In either event, please provide written confirmation that your Notice of Violation has been rescinded.

I look forward to your response. Please do not hesitate to contact me at (603) 778 – 0686.

Very truly yours,

DONAHUE, TUCKER & CIANDELLA, PLLC

Justin L. Pasay, Esq.

cc:
Client
John J. Ratigan, Esq. (email only)
Jae Whitelaw, Esq. (email only)

Enclosures.

LAND USE OFFICE
OCT 29 2014
RECEIVED

Conservation Easement Deed

EXHIBIT

1

CONSERVATION EASEMENT DEED

I, Stephen Jeffery, married, of France Road, Town of Barrington, County of Strafford, State of New Hampshire, (hereinafter sometimes referred to as the "Grantor" which word where the context requires includes the plural and shall, unless the context clearly indicates otherwise, include the Grantor's executives, administrators, legal representatives, devisees, heirs and/or assigns), for consideration paid, grant to the Society for the Protectin of New Hampshire Forests, a corporation duly organized and existing under the laws of the State of New Hampshire, with a principal place of business at 54 Portsmouth Street, City of Concord, State of New Hampshire, being a publicly supported corporation, contributions to which are deductible for federal income tax purposes pursuant to S501(c)(3) of the U.S. Internal Revenue Code, (hereinafter sometimes referred to as the "Grantee" which word shall, unless the context clearly indicates otherwise, include the Grantee's successors and/or assigns) with WARRANTY covenants, in perpetuity the following described Conservation Easement pursuant to RSA 477:45-48 exclusively for conservation purposes, namely:

1. The preservation of the land area and the water area to which it provides access and on which it fronts subject to the easement granted hereby for passive outdoor recreation by the general public, through the auspices of the Grantee, its permitted success or assigns; and

2. The protection of the natural habitat of fisher, bobcat, loons, deer and other naturally occurring plants and animals; and

3. The preservation of open spaces, particularly the farm and forest land, of which the land area and Mendums Pond to which it provides access and on which it fronts subject to the easement granted hereby consists, for the scenic enjoyment of the general public and/or consistent with the clearly delineated policy of the State of New Hampshire to preserve open space and forest resources as set forth in RSA 79-A.

Said Conservation Easement is hereby granted with respect to that certain parcel of land (herein referred to as the "Property") with any and all buildings, structures and improvements thereon situated in the Town of Barrington, County of Strafford, the State of New Hampshire, more particularly bounded and described as follows/as set forth in Appendix "A" attached hereto and made a part hereof.

The Property consists of 65 acres of significant wildlife habitat and well managed forest resources, visible from the public road and pond on which it fronts.

LAND USE OFFICE
OCT 29 2014
RECEIVED

The Conservation Easement hereby granted with respect to the Property is as follows:

1. USE LIMITATIONS

A. The Property shall be maintained in perpetuity as open space without there being conducted thereon any industrial or commercial activities, except agriculture and forestry.

i. For the purposes hereof "agriculture" and "forestry" shall include any and all agriculture, animal husbandry, floriculture and horticulture activities; the production of any and all plant and animal products for commercial purposes, including without limitation the growing and stocking of Christmas trees or forest trees of any size capable of producing timber and other wood products or the cutting and sale of timber and other wood products.

ii. Agriculture and forestry on the Property shall be performed to the extent possible in accordance with a coordinated management plan for the entire Property. Forest management activities shall be designed to uphold the intent of this easement and shall be in accordance with the currently acceptable practices as promulgated by the U.S. Forest Service and further defined by the U.S. Cooperative Extension Service and/or the County Forester. Agricultural activities shall be in accordance with then currently acceptable practices as promulgated by the U.S. Soil Conservation Service and further defined by the U.S. Cooperative Extension Service and/or the County Agricultural Agent or the District Conservationist.

B. The Property shall not be subdivided.

C. No structure or improvement such as a road, dam, fence, bridge, culvert, or shed shall be constructed, placed or introduced onto the Property except as necessary and desirable in the accomplishment of agricultural, forestry, conservation or recreational uses of the Property.

D. No changes in topography, surface or sub-surface water systems, wetlands, wildlife habitat or other such characteristics shall be allowed except as necessary and desirable in the accomplishment of the agricultural, forestry, conservation or passive recreational uses of the Property.

E. No signs, billbords or outdoor advertising structures shall be displayed on the Property except as necessary and desirable in the accomplishment of the the agricultural, forestry, conservation or passive recreational uses of the Property.

F. There shall be no mining, quarrying, excavation or removal of rocks, minerals, gravel, sand, top soil or other similar materials from the Property, except that rock removal or minor excavation incidental to the agricultural, forestry, conservation or passive

LAND USE OFFICE
OCT 2) 2014
RECEIVED

recreational uses of the Property shall be permitted so long as such activities do not alter the present natural character of the Property.

2. NOTIFICATION OF TRANSFER, TAXES, MAINTENANCE

A. Grantor agrees to notify the Grantee in writing within 30 days of the transfer of title of the Property.

B. Grantee shall be under no obligation to maintain the Property or pay any taxes or assessments thereon.

3. BENEFITS, BURDENS AND ACCESS

A. The burden of the easement conveyed hereby shall run with the Property and shall be enforceable against all future owners and tenants in perpetuity; the benefits of said easement shall not be appurtenant to any particular parcel of land but shall be in gross and assignable to any public agency having and performing governmental functions, or to any qualified organization within the meaning of Section 170(h) (3) of the United States Internal Revenue Code of 1954 as presently amended, and as the same may hereafter be amended or changed from time to time, which organization has among its purposes the conservation or preservation of land and water areas, and any such assignee shall have like power of assignment.

B. The Grantee shall have reasonable access to the Property and all of its parts for such inspection as is necessary to enforce the Easements and exercise the rights conveyed hereby and fulfill the responsibilities and carry out the duties assumed by the acceptance of this Easement Deed.

4. BREACH OF EASEMENT

A. When a breach of this Easement comes to the attention of the Grantee, it shall notify the then owner of the Property in writing of such breach, delivered in hand or by certified mail, return receipt requested.

B. Said Owner shall have 30 days after receipt of such notice to undertake those actions which are reasonably calculated to swiftly cure the conditions constituting said breach.

C. If said Owner fails to take such curative action, the Grantee, its successors or assigns, may undertake any actions that are reasonably necessary to cure such breach; and the cost thereof, including the Grantee's expenses, court costs and legal fees shall be paid by the said owner, provided the said owner is determined to be directly or indirectly responsible for the breach.

5. CONDEMNATION

A. Whenever all or part of the Property is taken in exercise of eminent domain so as to abrogate in whole or in part the Easement

LAND USE OFFICE
OCT 2) 2014
RECEIVED

conveyed hereby, the Grantor and the Grantee shall thereupon act jointly to recover the full damages resulting from such taking with all expenses incurred by them thereby to be paid out of the damages recovered.

B. The balance of the damages recovered shall be distributed among them in proportion to the value of their interests in that part of the Property condemned.

6. ADDITIONAL EASEMENT

A. Should the Grantor decide that the expressed purposes of this Easement Deed could better be effectuated by the conveyance of an additional easement on or interests in the Property to the Grantee such conveyance may be made provided the Grantee will accept delivery thereof.

7. ARBITRATION OF DISPUTES

A. Any dispute arising under this Easement Deed shall be submitted to arbitration in accordance with RSA 542.

B. The Grantor and the Grantee shall each choose an arbitrator and the arbitrators so chosen shall choose a third arbitrator.

C. A decision with respect to any such dispute by two of the three arbitrators shall be binding upon the parties and shall be enforceable as part of this Easement Deed.

LAND USE OFFICE
OCT 23 2014
RECEIVED

The Grantee by accepting and recording this Easement Deed for itself, its successors and assigns, agrees to be bound by and to observe and enforce the provisions hereof and assumes the rights and responsibilities herein provided for and incumbent upon the Grantee, all in the furtherance of the conservation purposes for which this Easement Deed is delivered.

IN WITNESS WHEREOF, I have hereunto set my hand this 23rd day of October, 1984.

WITNESS:

Katherine S. Jeffery

Stephen Jeffery

Stephen Jeffery

The State of New Hampshire
October 23, 1984, ss.

Personally appeared Stephen Jeffery and Katherine S. Jeffery who acknowledge the foregoing to be his voluntary act and deed.

Before me,

My Commisson Expires Sept. 10, 1986

Sandra E. Diesel

Justice of the Peace/Notary Public
Sandra E. Diesel

LAND USE OFFICE
OCT 29 2014
RECEIVED

ATTACHMENT A: Boundary description of the Stephen Jeffery property as described in a map entitled "Map of Midheaven Farm Property of Stephen and Katherine Jeffery" drawn in 1984.

The property covered by the foregoing easement lies in the Town of Barrington, County of Strafford, and consists of 65+/- acres, as more particularly described as follows:

Beginning at the south corner of a stonewall on the northwest side of France Road, so-called bounded to the north by land now or formerly of Gray, thence South 14° East approximately one hundred fifty-five (155) feet to a corner in a stonewall on said Road; thence South 28° East approximately one hundred forty-seven (147) feet along said road to a corner in said wall; thence South 77° 15' West approximately two hundred twenty-three feet to a bend in said wall; thence South 48° 30' West approximately two hundred thirty feet (230) feet to a point in said wall; thence South 48° 30' West approximately four hundred ninety (490) feet to the end of said stone wall; thence South 46° 05' West approximately seventy-five (75) feet to a point along land now or formerly of Andrew J. White and Forest C. Peters; thence South 46° 05' West approximately six hundred seventy-five (675) feet along said land of White and Peters to a point; thence South 47° 11' West four hundred seventy-three (473) feet to a pile of stones located approximately two hundred and sixty-four feet (264) feet North 31° 30' West of an iron pin on land of said White and Peters, said pile of stones also located at land now or formerly of E. Beale Wilson; thence North 31° 56' West one thousand one hundred and forty-one and four tenths (1141.4) feet along a wire fence along land of said Wilson to a point; thence South 47° 40' West approximately four hundred ten (410) feet along a wire fence to the edge of Mendam's Pond and land of said Wilson; thence approximately eight hundred seventy (870) feet northest along highwater mark of said pond to a point; thence North 48° 55' East approximately five hundred eighty (580) feet along a wire fence along land now or formerly of George McDaniel to a corner in a stonewall; thence North 48° 55' East approximately one thousand seven (1007) feet along land now or formerly of Paul Elliott and in part along a stone wall to the start of another stone wall; thence South 33° 21' East approximately six hundred ninety-one and one tenth (691.1) feet along land of said Elliott to a corner of stonewalls; thence North 59° 17' East approximately one hundred seventy-seven and five tenths (177.5) feet along land of said Elliott and in part along a stone wall to a point; thence North 49° 54' East approximately one hundred thirty-three and seven tenths (133.7) feet along said land of Elliott to a point approximately twenty-one and two tenths (21.2) feet South 38° 57' West of a stonewall on land of said Elliott and land now or formerly of Gray; thence South 41° 23' East approximately two hundred thirteen and four tenths (213.4) feet along land of said Grey to a corner of stone walls; thence South 42° 31' East approximately two hundred ninety-four and nine tenths (294.9) feet along said land of Gray and said stonewall to a point; thence South 41° 13' East approximately three hundred thirty-two and two tenths (332.2) feet along said land of Gray and said stonewall to a corner in said wall; thence North 67° 33' East approximately sixty-nine and eight tenths (69.8) feet to a corner in said wall, said corner being the point of beginning.

N O T E: This document is being recorded to confirm a conservation easement deed recorded on December 3, 1984, in Book 1153, Page 0025 of the Strafford County Registry of Deeds, and to correct it with the addition of this "Attachment A" which was inadvertantly omitted.

LAND USE OFFICE
OCT 29 2014
RECEIVED

AMENDMENT TO EASEMENT

The purpose of this "Amendment to Easement" is to amend the Conservation Easement Deed granted to the Society for the Protection of New Hampshire Forests (SPNHF), with a principal place of business at 54 Portsmouth Street, City of Concord, County of Merrimack, State of New Hampshire, by Stephen Jeffery, married, of France Road, Town of Barrington, County of Strafford, State of New Hampshire, dated October 23, 1984, and recorded at Book 1153, Page 0025 and Book 1163 Page 0380 in the Strafford County Registry of Deeds.

91 MAY 16 PM 12:03
REGISTER OF DEEDS
STRAFFORD COUNTY

The following section is hereby added:

8. RESERVED RIGHTS

A. The Grantor reserves the right to maintain, repair, renovate, make additions to, or replace if destroyed the existing buildings, structures, improvements, and utilities on the Property. Said buildings, structures, improvements, and utilities include the house, barn, driveways, septic system and related utilities and outbuildings existing on October 23, 1984. Said buildings are shown on a plan entitled "Map of Midheaven Farm, Property of Stephen and Katherine Jeffery, drawn 1984, 1 inch = 200 feet", on file with SPNHF.

005435

IN WITNESS WHEREOF, I have hereunto set my hand this 6 day of May, 1991.

Witness

Stephen Jeffery

The State of New Hampshire
,ss

Personally appeared Stephen Jeffery who acknowledged the foregoing to be his voluntary act and deed.

Before me,

Justice of the Peace/~~Notary Public~~
My commission expires:_____

DAN C. CUI, Justice of the Peace
My Commission Expires October 23, 1991

BK 1554 PG 0178

ACCEPTED: SOCIETY FOR THE PROTECTION OF NEW HAMPSHIRE FORESTS

By: _____
Duly Authorized

Title: President

LAND USE OFFICE
OCT 29 2014
RECEIVED

Identification of Property

IDENTIFICATION OF PROPERTY

Location: France Road
Town of Barrington
Strafford County
New Hampshire

Legal Description: Deed from Adelaide R. Becker
to
Stephen Jeffery
Dated October 21, 1980
Strafford County Registry of Deeds
Reference Book 1099 Page 639
Recorded May 12, 1983
Also
Conservation Easement Deed
from
Stephen Jeffery
to
The Society for the Protection of New Hampshire Forests
Dated October 23, 1984
Reference Book 1153 Page 0025
The deed was recorded in error without an Appendix A
"a description of the land".
It was rerecorded on December 3, 1984
Reference Book 1163 Page 380

Tax Reference: Town of Barrington
Map 7 Lot 26

Census Tract: 850

Zoning: Residential/Agricultural

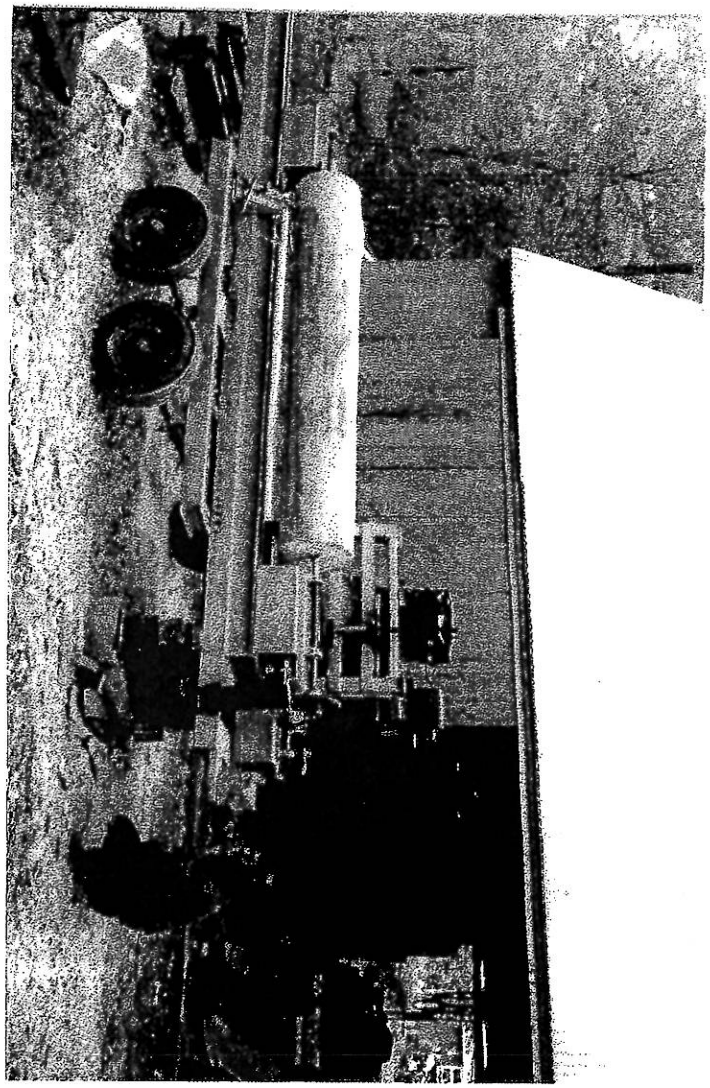
LAND USE OFFICE
OCT 29 2014
RECEIVED

Don McNamara

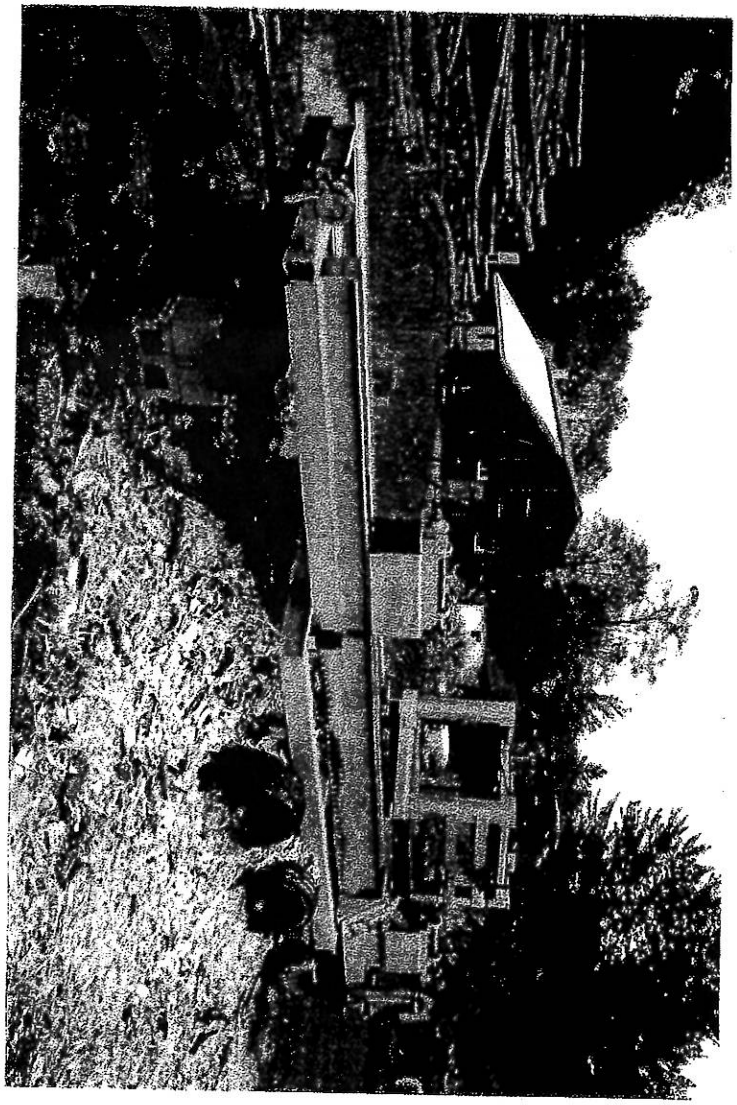
Photos

EXHIBIT

2



LAND USE OFFICE
OCT 29 2014
RECEIVED



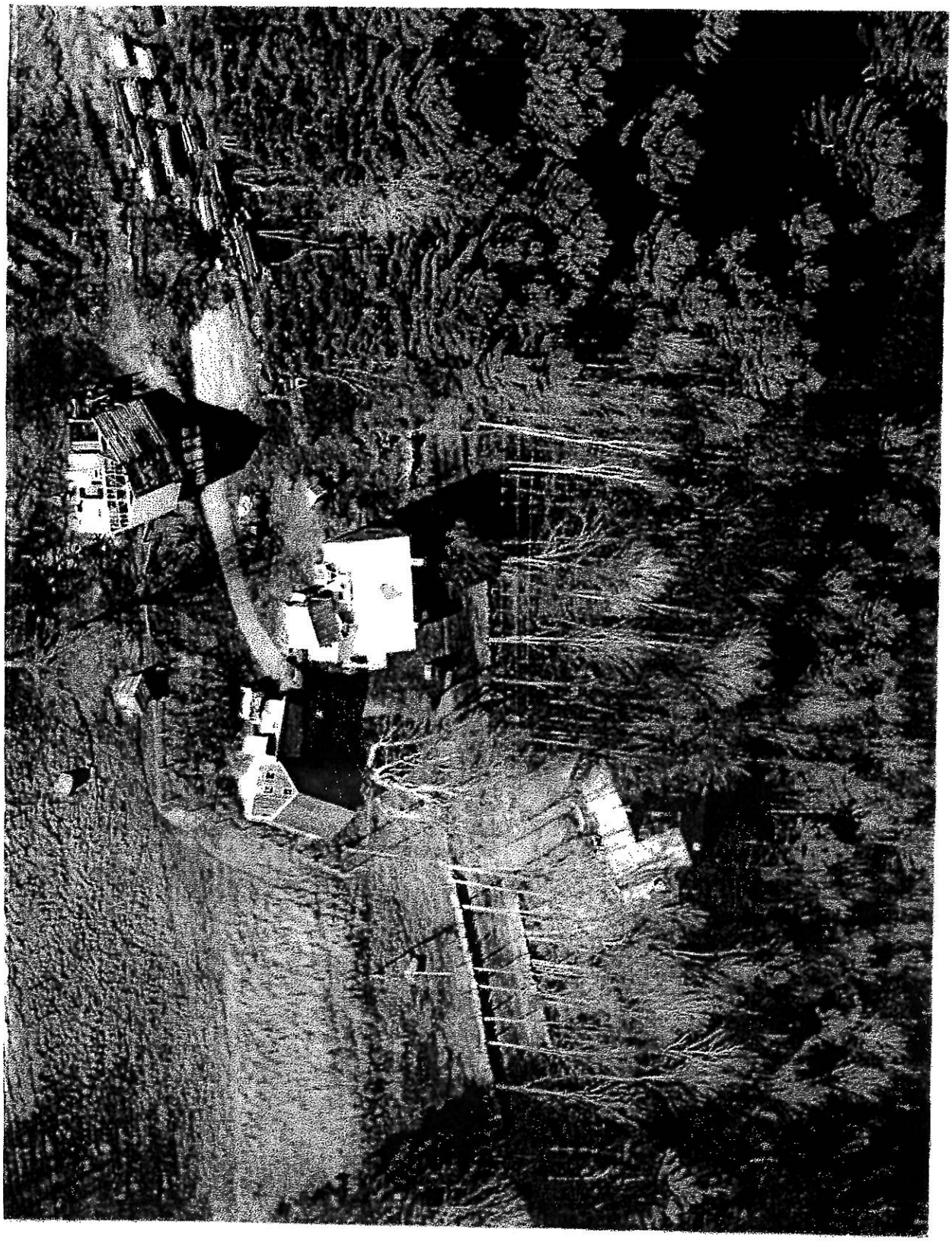
LAND USE OFFICE
OCT 29 2014
RECEIVED

LAND USE OFFICE
OCT 2 3 2014
RECEIVED

EXHIBIT

2

LAND USE OFFICE
OCT 8 2014
RECEIVED



LAND USE OFFICE

OCT 29 2014

RECEIVED

LAND USE OFFICE
OCT 2 1 2014
RECEIVED